United Nations

A/55/374

General Assembly

Distr.: General
11 September 2000

Original: English

Fifty-fifth session
Agenda item 114 (c)

Human rights questions: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Sudan

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in the Sudan prepared by Leonardo Franco, Special Rapporteur of the Commission on Human Rights, pursuant to General Assembly resolution 54/182 of 17 December 1999 and in accordance with Commission on Human Rights resolution 2000/27 of 18 April 2000[1] and Economic and Social Council decision 2000/258 of 28 July 2000.

* In accordance with General Assembly resolution 54/248, sect. C, para. 1, this report is being submitted on 11 September 2000 so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Sudan

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	3
II.	Respect for human rights and humanitarian law in the conflict	3–45	3
III.	Constitution and transition to democracy	46–60	8
IV.	Women's rights: visit to Omdurman Women's Prison	61–66	10
V.	Rights of the child and juvenile justice	67–73	11
VI.	Other reported violations of human rights	74–79	11
VII.	Conclusions and recommendations	80–92	12

I. Introduction

1. The Special Rapporteur reviewed the situation of human rights in the Sudan, undertook a mission to the country and prepared a draft report but, owing to a family emergency, was not able to finalize it in time for its submission to the Commission on Human Rights at its fifty-sixth session. A note by the secretariat (E/CN.4/2000/36) replaced that report, and reflected the Special Rapporteur's conclusions and recommendations. The present report contains the findings of the mission and updated information on the overall situation.

2. The Special Rapporteur acknowledges the very good cooperation received from the Government of the Sudan throughout his visit. Particular thanks go to the Rapporteur of the Advisory Council for Human Rights, as well as to the Office of the Resident Coordinator at Khartoum, the United Nations Children's Fund (UNICEF) and Operation Lifeline Sudan (OLS).

II. Respect for human rights and humanitarian law in the conflict

A. Peace talks

3. Within the framework of its peace initiative for the Sudan, the Intergovernmental Authority on Development (IGAD) has held several rounds of talks in Nairobi during the past seven years without, however, making any breakthrough. Although the appointment of a mediator late in 1999 initially gave new impetus to the negotiations, the most recent rounds of peace talks ended in deadlock over (a) the issue of separation of religion and state and (b) which zones could be termed part of southern Sudan and hence included in the referendum on self-determination provided for in the IGAD Declaration of Principles. Furthermore, the intensification of hostilities created an adverse atmosphere for the continuation of talks.

4. In October 1999, the Governments of Egypt and the Libyan Arab Jamahiriya agreed on steps to implement a joint comprehensive peace initiative for the Sudan. Efforts are under way to merge it with the IGAD initiative.

5. An IGAD delegation visited Khartoum late in July 2000 to arrange a special session to resume negotiations and, on 17 July, the Government of Egypt convened a preparatory conciliatory meeting which was initially to be held at Cairo.

6. At the grass-roots level, within the people-to-people peace process, progress was reported with the Liliir Peace Conference, brokered by the New Sudan Council of Churches and held in the Bor area of the Upper Nile, from 9 to 15 May 2000. The Conference reunited more than 250 traditional and civil leaders, representing members of the Anyuak, Dinka, Jie, Kachipo, Murle and Nuer ethnic groups from the region, to address the root causes of their conflict.

B. Intensification of military activities

7. During his mission, the Special Rapporteur held numerous consultations with governmental officials, national and international organizations, the Sudan People's Liberation Movement and Liberation Army (SPLM/A) and individual experts. He received well-documented information, often from first-hand sources, pointing to the perpetration by all parties to the conflict of massive and systematic violations of human rights and international humanitarian law, the principal targets of which were innocent civilians.

8. As elaborated below, the Government continues to resort to the indiscriminate bombing of civilians, as demonstrated by the Kaouda school incident in February 2000. During his mission, the Special Rapporteur learned that, on some occasions, civilians were deliberately targeted as they gathered for food distribution. Access to humanitarian aid is often severely hampered. Allegations were received of forced displacement of members of the Nuer population, aimed at gaining control of the oil zone, followed by resettlement of Baggaara tribes in the same areas. Finally, despite the positive step marked by the creation of the Committee for the Eradication of Abduction of Women and Children (CEAWC), consistent information was received whereby armed attacks against civilians have continued in northern Bahr el Ghazal, some of them involving abductions of women and children.

9. The Special Rapporteur also received information on serious disregard for international humanitarian and human rights law by SPLM/A, as reflected below, concerning the forced recruitment of children and

planting of mines, in particular but not only in Eastern Equatoria.

10. After the mission, and in spite of the signature on 7 May 2000 of a United Nations-brokered agreement between the Government and the rebels on relief transport in Bahr el Ghazal, the situation of human rights and respect for humanitarian law within the conflict deteriorated. The Government intensified its systematic policy of bombing civilians and civilian installations. SPLA launched an offensive during the ceasefire in northern Bahr el Ghazal, which led to the capture of Gogrial on 24 June. As a result, the ceasefire has not been renewed since it expired in July;[2] new waves of displacement have taken place and access to the needy population has become more difficult, thus increasing the potential for another humanitarian catastrophe.

11. The co-chairs of the Committee on Sudan of the IGAD Partners Forum confirmed reports of extensive military activity and troop movements in Bahr el Ghazal and declared on 19 July 2000 that offensive military actions were strongly condemned as they contributed to threatening the civilian population that the ceasefire should protect, that IPF had previously condemned the bombing of civilian targets and had expressed grave concern about the violation of the ceasefire, and that the capture of Gogrial was a clear violation of the SPLA unilateral ceasefire that had been extended from April 15.[3]

C. Bombing of the civilian population

12. The Special Rapporteur is profoundly shocked by the recurrence of the Government's practice of bombing civilians and civilian installations, including humanitarian ones.

13. Prior to his mission, the Special Rapporteur was informed of a number of attacks against civilians and expressed his indignation at the bombing of the Upper Kaouda Holy Cross school in the Nuba Mountains, which resulted in the death of 14 children (see E/CN.4/2000/36). While on mission, further incidents occurred which were confirmed by the United Nations security in Lokichoki: on 29 February, two bombs in Kaya killed two people, and two bombs in Lijo killed eight. While in Lokichoki, the Special Rapporteur learnt of a further incident in Lui, western Equatoria, on 2 March, in which three people were reported killed and three wounded.

14. Regrettably, after the mission, incidents intensified despite President Omar al-Bashir's announcement on 19 April regarding the cessation of all air bombing operations in the south except those carried out in self-defence and in areas of operation. The following incidents were reported in 2000:

(a) On 29 April 2000, a woman and a child were reported to have been killed in Girgir;

(b) In early June, an attack by air and ground forces against a Catholic mission near the city of Gumriak reportedly resulted in the death of 32 individuals, including women and children;

(c) On 25 June, eight bombs were reportedly dropped in Kajo Keji, Eastern Equatoria. No information was received on casualties or damage;

(d) On 30 June, it was believed that an area west of Mapel and south of Bussere, Bahr el Ghazal, had been bombed. No reports of casualties or damage were received. On the same day, in Yei, Eastern Equatoria, 12 bombs were reportedly dropped, resulting in one casualty and one tukl being burnt;

(e) On 2 July, bombs hit an open area between the Catholic and Episcopal churches and a marketplace in Rumbek, killing a young girl and a pregnant woman and injuring 23 individuals;

(f) On 2 July, several people were injured and houses were damaged in Liethnom, Lunyaker and Cueibet;

(g) On 7 July, several unconfirmed reports were received of bombing, in particular around Aweil;

(h) On 12 July, two of 19 bombs dropped in Akon, Bahr el Ghazal, reportedly landed 250 metres from the UNICEF compound. No casualties were reported;

(i) On 17 July, Chelkou airstrip was bombed, resulting in one woman injured and the destruction of several houses. The cabin of an International Committee of the Red Cross (ICRC) plane was damaged by shrapnel;

(j) On 20 July, bombs were dropped in Lietnom, Bahr el Ghazal, resulting in one civilian injured and two tukls erected by Vétérinaires sans frontières destroyed;

(k) On 22 July, 24 bombs were dropped in five bombing runs on Nyamlell, Bahr el Ghazal. No casualties or damage were reported, even though some of the bombs fell close to the compound of the non-governmental organization Concern;

(l) On 28 July, several bombs landed in Akhuem, northern Bahr el Ghazal, close to a plane of Médecins sans frontières and near its health centre which serves 20,000 people in the area. After the bombing, the organization's medical team evacuated the area;

(m) On 7 August, 18 bombs were dropped near an OLS base in Mapel, Bahr el Ghazal, reportedly killing at least 8 civilians and wounding at least 200. The nearby town of Tonj was also bombed.

15. As a result of the latter incident, OLS temporarily suspended aid flights on 8 August. The Secretary-General expressed concern about the consequences of the suspension for the people who rely on relief aid to survive and about the security of OLS personnel and facilities. He was also particularly alarmed at the Mapel bombing which had involved a United Nations aircraft that had been cleared by the Government to undertake its flight.

16. On 10 August, members of the Security Council expressed concern over rising violence in the Sudan and, on 11 August, called upon the parties to resume their humanitarian ceasefire and allow the United Nations access to all civilians in need. A number of countries and organizations also condemned the bombing incidents. It was estimated that, as a direct consequence of the escalation of the conflict, some three million people in southern Sudan may face severe food shortages.

17. As a first official response, the Government urged the Secretary-General to intervene for the resumption of flights while President al-Bashir promised to ensure the safety of humanitarian operations. The United Nations decided to resume its humanitarian flights on 16 August at a time when the Government was proposing a review of the United Nations humanitarian programme.

D. Oil issue: situation in western Upper Nile

18. In his previous report to the General Assembly (A/54/467, annex), the Special Rapporteur focused on the economic, political and strategic implications surrounding oil exploitation in western Upper Nile, which have seriously exacerbated the conflict, thereby causing a deterioration in the overall situation of human rights and respect for humanitarian law and narrowing the slim chances for peace.

19. Canadian sectors of civil society accused Talisman Energy Incorporated of being the passive accomplice of human rights abuses in Upper Nile so as to guarantee security for its oil operations. As a result, in October 1999, the Government of Canada decided to send an assessment mission to, inter alia, investigate and report on the alleged link between oil and human rights violations, in particular in respect of the forced removal of populations around the oilfields.

20. The findings of the mission, led by John Harker late in 1999, largely confirmed the observations of the Special Rapporteur and shed further light on the May/June 1999 offensive in Ruweng county, revealing that, from April to July 1999, the decline in population in the county seemed to have been in the order of 50 per cent, and that over the years, the series of attacks and displacements were leading to a gradual depopulation of the area, since only a percentage of people who fled returned after each displacement.

21. The Harker mission pointed out that while there have always been pressures on the Dinka in the Heglig-Ruweng area as a result of inter-tribal fighting with Arab nomads for grazing areas and dry-season water, the situation had worsened with the beginning of oil exploration and had continued to deteriorate over the years because of the periodic offensives launched by the Government and its allies, resulting in destruction and mass population displacement.

22. During his mission, the Special Rapporteur attempted on two occasions to travel to the oil area but was unable to do so because of security reasons. In meetings in Khartoum and Lokichoki, however, he was able to glean some information.

23. During a meeting with representatives of Talisman Energy Incorporated, the Special Rapporteur was informed that there was a military camp close to the oil fields and that military movement around it did

take place. Talisman representatives also confirmed that the Heglig airstrip was used for military purposes, although allegedly defensive, on several occasions.

24. It was also reported that Talisman was developing Heglig through the construction of facilities such as schools and hospitals, while encouraging its workers to move there. Miseiriyya, who are part of the Arab Baggaara tribes, were moving into the region, thus putting further pressure on the local Nuer who were reportedly leaving the area and heading towards the south or to the Shuluk area of Tonga in the direction of Malakal. It was also reported that some names of the local villages had been adapted to the Arabic language, which might imply a strategy aimed at arabizing the area, with a view to claiming it. This would make sense considering that Bentiu, itself a garrison town, is an enclave controlling the oil, within territory held by SPLM/A.

25. It should be noted that, although the information received strongly emphasized the seriousness of the displacement, owing to problems of security, logistics and the Government hindering access, it was very difficult to gather precise information on the number of people affected.

26. It was also reported that a new urgent humanitarian crisis, mainly related to the fighting in Upper Nile, was taking place, involving looting and destruction of crops and villages and generating further displacement. It was reported that, on several occasions, the Government had denied access to OLS in western Upper Nile. Humanitarian assistance was, however, brought in by other agencies. At the beginning of August, the United Nations estimated that there were up to 40,000 internally displaced persons moving into Bentiu, most in an alarming nutritional state. Further influxes of displaced people may turn catastrophic since the area is already facing a situation of critical food shortage.

27. Further studies by non-governmental organizations have appeared, which document the various aspects of the links between the oil issue and the human rights situation.

E. Committee for the Eradication of Abduction of Women and Children

28. In his report to the General Assembly at its fifty-fourth session (A/54/467), the Special Rapporteur welcomed the creation of CEAWC and suggested that its work be assessed against: (a) the identification, tracing and retrieval of abducted women and children; (b) their reunification with their families of origin; and (c) the undertaking of a study on the root causes of this practice in order to prevent its reoccurrence.

29. The Special Rapporteur expresses the hope that CEAWC will also address concerns raised in a number of human rights circles regarding the existence of the slavery-like practices that arise in connection with war strategies.

30. During his mission, the Special Rapporteur received general information reiterating data collected previously, indicating that between 5,000 and 15,000 Dinka children and women had been abducted and transferred to the areas of the Arab Baggaara tribesmen. Abductions allegedly occur during raids by Baggaara armed militia, maverick groups and bandits, or members of the Government-affiliated People's Democratic Front (PDF). Abductees are subsequently forced to herd cattle, work in the fields, fetch water, dig wells, do housework and perform sexual favours. Their treatment is extremely harsh: abuse, torture, rape and, at times, killing being the norm.

31. During his mission, the Special Rapporteur had the opportunity to discuss the issue with the Rapporteur of the Advisory Council for Human Rights and Chairman of CEAWC and with the Chairman of the CEAWC Dinka Committee, who invited him to his house where a number of former abductees were staying, pending reunification with their families. Consultations were also held with representatives of UNICEF and Save the Children Fund (United Kingdom of Great Britain and Northern Ireland). The Special Rapporteur also travelled to Nyala, Darfur, where he met with representatives of the tribal committees and CEAWC field office and conducted extensive interviews with former abductees.

32. It was reported that, of the approximately 1,230 documented cases that were traced and retrieved in field missions in Southern Darfur, Al-Fulla, Western Kordofan, Adeela, Al-Daein and Nyala, 353 children had been reunited with their families.

33. The Special Rapporteur was informed that, despite the strong commitment shown by some members of CEAWC, the process had been inordinately slow, expensive and wrought with obstructions from various actors at the national and subnational levels. The need

for a massive advocacy campaign aimed at the broadest range of actors, from the President down to the walis, tribal and religious leaders, opinion-makers, the media, intellectuals and university lecturers, was often underscored.

34. The Special Rapporteur was highly impressed with the quality of senior CEAWC authorities and regrets that the Chairman of the Dinka Committee reportedly suffered abuse, including detention and other serious impediments to the discharge of his mandate.

35. The Special Rapporteur was informed that no serious investigation had taken place of the root causes of this practice, possibly because of a lack of engagement of the top political leadership in the process or a reluctance to cooperate.

36. In a meeting held in Khartoum with Baggaara representatives, the Special Rapporteur also received information on isolated cases of abductions of women from the Rizeigat and Miseiriyya groups by SPLM/A. A list of cases was given to the Special Rapporteur, who forwarded it to SPLM/A which denied any involvement. Information was also received that would confirm that certain elements of SPLM/A would personally benefit from the trade engendered by the redemption policy adopted by some international non-governmental organizations.

37. The Special Rapporteur had expectations that, with the creation of CEAWC, there would be no recurrence of raids. He learned with dismay, however, that, on 21 February 2000, PDF allegedly attacked several villages in eastern Aweil and Twic counties, northern Bahr el Ghazal, killing 16 civilians, abducting some 300 women and children and stealing cattle while looting and burning villages. The information was confirmed by United Nations security officers in Lokichoki. The number of abductees was not, however, confirmed. Upon his return, the Special Rapporteur raised this incident with the Sudanese authorities in Geneva, who promised to shed light on the incident.

F. Abuses by SPLM/A in Eastern Equatoria

38. Credible reports were received whereby SPLA, mostly Dinka, was behaving as an occupying army in Eastern Equatoria and was incapable of generating any trust in the local Didinga population.[4] It was reported that people were often mistreated and sometimes had the feeling that they were in a foreign country. The local Didinga civil administration cannot work properly owing to the intimidation it is subjected to by SPLM/A which have the military power. Movements of people have been reported, owing to a lack of food, since SPLM/A take a percentage of the food distributed. The issue of diversion of food aid by SPLM/A was raised with the SPLM/A representatives in Nairobi. While one SPLM/A representative flatly denied the allegation, another informed the Special Rapporteur that a committee had been created in 1999 to look into any such incident and that the situation had now improved.

39. The Special Rapporteur was informed that some 2,500 Didinga had left the region to seek refuge in the neighbouring countries: 1,500 were reportedly hosted in Kakuma refugee camp, Kenya, and over 1,000 in Acolpi, Uganda, most of them unaccompanied minors aged 5 to 15 years. It was also reported that women were often raped and that the risk of the spread of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) was increasing. Some women had reportedly been taken at gunpoint and married against their will, while others had disappeared. There was widespread fear of reporting abuse. These incidents had been occurring from as far back as early 1994 and had exacerbated the troubled relationship between the Didinga and SPLM/A to the point of no return. Many believe that reconciliation is now impossible, since the Didinga consider that they have suffered too much.

40. Several reports were received that SPLM/A were forcefully recruiting children. In December 1999, in the villages of Lorus and Nimule, Eastern Equatoria, SPLM/A took by force a number of children to train as soldiers. It was reported that up to 27 schools in the region had been closed and that children were therefore lacking all kinds of education. The Special Rapporteur raised the issue of the forced recruitment of children with SPLM/A representatives in Nairobi, who denied all allegations, defining SPLA as a voluntary army and claiming that efforts were under way to demobilize any children under the age of 16 years and to put them into school.

41. Credible, reiterated reports were received that SPLM/A were planting mines around villages in Eastern Equatoria for purposes of defence. This practice often prevents the local population from

cultivating the land and seriously affects internally displaced persons. It was further reported that children had been seen collecting mines and that mines had exploded, maiming the child. The issue of mines was also raised by the Special Rapporteur in his meeting with the SPLM/A representatives, who stated that SPLM/A only replanted mines that had originally been planted by the Government, moving them to other locations. SPLM/A also informed the Special Rapporteur of efforts to demine the areas under its control.

G. Refugee situation

42. In June 2000, more than 50,000 Eritrean refugees reportedly had fled into Kassala state on the eastern border with Eritrea since fighting between Ethiopia and Eritrea resumed on 6 May. The Sudan was already hosting some 150,000 Eritrean refugees prior to May 2000, as well as some 12,000 Ethiopians, many of whom had lived in refugee camps in the Sudan for up to 30 years. The exodus into the Sudan almost coincided with the planned start of the United Nations voluntary repatriation of Eritrean refugees.

43. On 1 August, the United Nations High Commissioner for Refugees (UNHCR) reported that 11,785 Eritrean refugees had returned to Eritrea from the Kassala camps since the start of its voluntary repatriation programme on 25 July.

44. UNHCR figures on Sudanese refugees abroad, released early in April, referred to some 200,000 individuals in Uganda and 65,000 in Kenya, with more than one half of all refugees being under 18 years of age.

45. During her visit to the Sudan in June 2000, the United Nations High Commissioner for Refugees praised the Sudan for having sheltered thousands of refugees for decades, including the most recent arrivals from Eritrea.

III. Constitution and transition to democracy

46. In his previous reports, the Special Rapporteur devoted significant attention to the 1998 Constitution and its implementation. During his most recent mission, he reiterated that the Constitution should make express mention of the status of the international human rights treaties to which the Sudan is a party.

A. 1999 National Security Forces Act

47. The 1999 National Security Forces Act, which repealed the 1994 Security Act, regulates the functions and competence of the security apparatus and is to be read in conjunction with the 1996 Regulations on the internal and external security services. The Special Rapporteur takes note of the Government's view that the law represents an improvement, yet submits that it still raises serious questions that need immediate attention.

48. The Special Rapporteur considers that the security forces deem themselves to be above the law and act with virtual impunity, and has expressed serious concern in this regard. The 1999 law provides for the creation of a special court to deal with security-related cases. Among other crimes, the special court, which is composed of security officers with no participation of members of the regular judiciary, exercises jurisdiction over cases of abuse of power by security agents. Governmental officials reported that it had become the practice that cases involving physical or material damage to private citizens were referred to ordinary courts. The Special Rapporteur would welcome such practice being enshrined in law. He also requested the authorities to provide him with evidence of public trials held against members of the security forces.

49. The Special Rapporteur is deeply concerned about the derogations that the law allows from ordinary procedures of arrest and custodial detention. In particular, the law prescribes that: (a) a security agent can carry out an investigation, including acts such as search and arrest, with the sole authorization of an order issued by the Director General of the Security Services; and (b) within the first three days of detention, the security agent must provide reasons for arrest. This detention can be prolonged for a further 30 days by the Director General who is under an obligation to inform the competent prosecutor who, however, has no obligation to review the case until it becomes eligible for another 30-day extension period. Custodial detention can then be extended for an additional 30 days, this time with the approval of the competent prosecutor. In accordance with the law, the arrested person can contact her or his family or peer

group if that does not prejudice the investigation of the case, but the law does not provide for the arrested person to contact a defence lawyer, which virtually opens the way to incommunicado detention.

50. The Special Rapporteur noticed that, while the Prosecutor's Office exercises full state authority under the Ministry of Justice, there appears to be a lack of counterbalancing institutional guarantees in favour of the suspect, such as prompt and adequate access to a defence lawyer and the right to an independent judicial review of the detention. According to the law, public prosecutors having competence over security cases are appointed by the Minister of Justice. While governmental officials stated that it is the practice for the highest ranking prosecutor to follow security cases, other sources suggested that such prosecutors are selected on the basis of their close ties with the security apparatus. A collusion of interests in the executive with regard to security cases can never totally be ruled out.

51. The 1996 Regulations provide the arrested person with the right to seek a judicial review from a competent judge. In practice, however, since the detainees are not guaranteed access to persons other than security agents, they may not benefit from that right. Therefore, the Special Rapporteur recommends that judicial review become mandatory for all cases of security detention.

B. Emergency declaration of 12 December 1999

52. The impact of the emergency declaration of 12 December 1999 on the human rights situation was one of the main issues analysed by the Special Rapporteur during his mission.

53. It should be recalled that, on 12 December 1999, two days before Parliament was to pass a Turabi-backed constitutional amendment,[5] President al-Bashir declared a state of emergency throughout the country for a period of three months, under articles 43 (d) and 131 of the Constitution. On 24 January, following an agreement with Parliamentary Speaker Hassan al-Turabi, President al-Bashir appointed a new government. While the four key ministers, of defence, external relations, the interior and information, kept their posts, the number of government posts was reduced from 27 to 25. On 12 March 2000, the state of emergency was extended until the end of the year. On 23 April, the Government announced presidential and parliamentary elections for the second half of October.

54. Late in June, following President al-Bashir's previous decision to suspend the general secretariat of the National Congress, thereby suspending Hassan al-Turabi's political activities within the party, the latter announced the registration of a new party, the Popular National Congress.

55. During the mission, the Special Rapporteur noted with appreciation that the emergency declaration had not been followed by large-scale measures against human rights and people appeared to be enjoying a greater degree of freedom of expression and assembly than during his previous missions. This may be the result of the power shift within the ruling party, the Government's efforts to improve its international relations and the role of the political opposition.

56. Nevertheless, the Special Rapporteur also received elements substantiating the conclusion that, in spite of this encouraging new climate, patterns adversely affecting human rights continue. Such rights remain vulnerable, owing to the expansion of powers enjoyed by the security organs, the lack of judiciary revision and, in general, the tight control of the ruling party over the institutions and the social life of the country.

57. The new ambivalent scenario was apparent during an open-air meeting organized by a prominent lawyer, at which a number of opposition figures were present. During the event, the Special Rapporteur noted with appreciation that the number of participants was at least double that of a similar event arranged on the occasion of his previous visit. He also noticed that participants used microphones and recorded their interventions. The Special Rapporteur also noted with appreciation the creation of a new human rights non-governmental organization.

58. A number of very serious concerns were, however, raised. Some of the speakers, while recognizing that some progress had been made, expressed acute concern about the role of security agents who are invariably identified as putting in jeopardy human rights and fundamental freedoms. Specific concerns were raised about the right to freedom of association: it was reported that the current trade union law was not in line with conventions of the International Labour Organization and that amendments were therefore necessary. Also, there is

reportedly no law allowing the establishment of civil society organizations, the existing law having been suppressed for security reasons. Concerns were also expressed at the Tawali law, which was subsequently replaced. Political participation through a free election is virtually not possible, since many political parties are still in exile. As for freedom of expression, the Press and Publication Act reportedly allows for the arbitrary suspension of newspapers with no court involvement in the decision, with the result that the press is intimidated.

59. Particular concerns were expressed about the increasing number of internally displaced persons, in particular women who had lost their husbands owing to the war and children, many of whom were deprived of shelter, education, access to food and medical care. Most of these persons are illiterate and have no other means of earning their living than to resort to traditional brewing, which is a crime under the Sharia law in force in the north. The Public Order Police therefore arrest them and often subject them to ill-treatment and torture, including sexual abuse and lashing. Children have at times a communication problem: most of them do not speak Arabic and, being far from their area of origin, they often do not even speak their native language. Since their mothers are not able to take care of them, they are often incapable of communicating, let alone of getting any education. The Government has set up schools which provide evening classes but many cannot attend them because they live too far away. It was reported that those who could not be accommodated in the camps provided by the Government had to be temporarily confined to the outskirts of the major towns. After 10 to 15 years, they have now been relocated by force without any notice. The plight of the people in the Nuba Mountains was also referred to as a matter of concern.

60. Regarding the situation of Sudanese citizens abroad, the Special Rapporteur was pleased to learn of measures adopted by the Government in June that facilitate the right to return of certain political leaders and militants in exile.

IV. Women's rights: visit to Omdurman Women's Prison

61. During his visit to the Omdurman Women's Prison, the Special Rapporteur, although accompanied by governmental officials, was able to speak freely with some of the inmates.

62. The prison administration informed the Special Rapporteur that there were 826 inmates held in Omdurman,[6] 820 of whom had been convicted and 6 indicted; 182 had been released by presidential order, 166 by court decision and 2 after payment of a fine, in one case a combination of blood money and a fine.

63. There were 159 mothers and 181 accompanying children who were under the supervision of their mothers and the prison administration. Ninety per cent of the inmates were in jail on charges of brewing alcohol. No separate facility was foreseen for political prisoners (of whom there were none at the time of the visit) or for detainees on death row (there were none at the time of the visit), who are usually held with those who have been sentenced to the longest terms.

64. From the interviews conducted, it emerged that, in most cases, the Public Order Police are responsible for the arrests. Women are only occasionally charged but are often beaten up. Most of them had not received any legal assistance. Some of them had been tried by a judge with no legal representation whatsoever, and sometimes no witnesses. Several cases of similar nature were detected, to the extent that a pattern could be identified. Women from southern Sudan move to the north to flee the war. Many of them resort to alcohol brewing to make money and feed their children. Revenues from alcohol brewing are reportedly the only ones that women can keep for themselves, whereby any other revenue would have to be handed over to their husbands. Reportedly, although most of the inmates had been jailed for brewing alcohol, the alcohol sometimes had been bought by the police themselves who had then used it as evidence against the women. Concern was raised about the fate of children once mothers had been arrested, since most of them become street children, with no one taking care of them.

65. The delegation visited some of the cells as well as the washrooms. It was reported that hygienic conditions are not satisfactory and that water was often cut off. Also, the food was scarce and of poor quality. It was reported that inmates were not allowed to receive food and that if relatives brought it, it was immediately confiscated by prison wardens. It was also reported that visits were not always allowed and that relatives were sometimes asked to pay. To a certain extent, health care is provided. Ill-treatment was also

common, although rumours that rape occurred within the detention facility were not confirmed.

66. The Special Rapporteur was relieved to learn that, in May 2000, some 563 women had been released from Omdurman following a nation-wide presidential decree. At the end of the month, another 389 women serving terms in provincial prisons were set free. The decree provided that all women jailed for public order offences, including liquor trafficking, drinking and misbehaving, be released. It was reported that more than 80 per cent of those released were non-Muslim southerners convicted of making or selling alcohol.

V. Rights of the child and juvenile justice

67. The Government of the Sudan has ratified the Convention on the Rights of the Child and submitted its initial and first periodic reports to the relevant Committee. By doing so, it provided evidence of a strong commitment to upholding international standards in the field of children's rights. The Special Rapporteur is thus confident that the observations below will receive attentive consideration.

68. In the Sudan, the minimum age of criminal responsibility is set at 7 years. Although article 40 (3) of the Convention on the Rights of the Child does not define a specific minimum age, requiring the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe penal law, the Committee on the Rights of the Child has frequently expressed concern when the age is set too low, be it 7 or 10 years (see CRC/C/15 Add.15, CRC/C/15/Add.102 and CRC/C/15/Add.116). Apart from situations where no age is determined by the law, 7 years is the lowest minimum age recorded internationally.

69. In the Sudan, article 47 of the 1991 Criminal Act includes, among the measures of welfare and reform prescribed for juveniles, whipping not exceeding 20 lashes, by way of discipline. The Committee on the Rights of the Child has indicated that corporal punishment of children is incompatible with the Convention on the Rights of the Child (see CRC/C/34, annex IV, sect. II.B), referring in particular to article 19 which requires protection of children from all forms of physical or mental violence. The Special Rapporteur wishes to be associated with the Committee's expression of hope that the review of child-related laws will result in the total abolition of flogging (CRC/C/15/Add.10, para. 17).

70. The Special Rapporteur has previously reported on the use of children as combatants. In this connection, he was relieved to learn that a demobilization camp was set up in Rumbek as a result of a joint effort by UNICEF and SPLM to move the under-aged troops off the battlefield.

71. The Special Rapporteur visited a reformatory, at which juveniles between 7 and 18 years of age are detained as a preventive measure for up to three years. A total of 82 boys and 13 girls were being hosted. The detention seems to be rather a form of rehabilitation aimed at providing children with some skills, with the assistance of social workers. The reformatory administration advised that children there are treated as such rather than as prisoners; they can leave the facility and travel to see their families who have free access to them and can visit and bring them food.

72. The delegation briefly chatted with some of the children and was informed by one of them, aged 17 years, from western Sudan, that she had been arrested while at the market with a group of people who were brewing alcohol. She had reportedly been sentenced to two years. Another child, aged 14 years, had been sentenced to one year and three months for the theft of money, while another, aged 13 years, had been caught with stolen money.

73. The delegation was informed that children wake up, pray and go to school where they are taught mathematics, sciences, Islamic literature and religious studies, both for Christians and Muslims. They are allowed to play football on Fridays and Sundays. Hygienic conditions seemed to be acceptable, the place looked clean and so did the children who reported that they can wash themselves with soap.

VI. Other reported violations of human rights

A. Individual cases

74. The Special Rapporteur expresses concern at information received during his stay in the Sudan which reveals the persistence of cases of human rights

violations in the northern part of the country, although the number appears to be declining.

75. On 26 February 2000, a wrap-up session was held with the Rapporteur of the Advisory Council for Human Rights, during which the Special Rapporteur handed over a list of selected cases of allegations of human rights violations for the Government to follow up. The list, which covered the period from April 1999 to the end of the visit by the Special Rapporteur, identified five cases of torture, seven cases of arbitrary detention (affecting some 50 individuals), three cases relating to freedom of expression and one case linked to freedom of movement. The list also included three cases of disappearances dating back to 1997/1998 and seven further cases of arbitrary detention affecting some 20 individuals, which, however, had not been confirmed.[7]

76. The Special Rapporteur remains concerned that, despite the more favourable political environment described above, he continued to receive allegations after his mission, including cases of extrajudicial killing, torture and arbitrary detention. The cases will be submitted to the Government.

B. Suspension and/or dismissal of students

77. The Special Rapporteur received substantiated information regarding action intended to limit the rights of students belonging to opposition groups, to join students' unions. According to information received, on 25 December 1999, around 100 students at Wadi al-Neel University, Atbara, were dismissed because of their political opinions. Some of them were reportedly subjected to arbitrary detention or ill-treatment. Their names were reflected on a list which was handed to the Sudanese authorities. Similar incidents were reported in June (in particular at the University of Sinar, Blue Nile) and August 2000.

C. Khartoum bombings

78. In his previous reports, the Special Rapporteur devoted considerable attention to the case of the 27 southerners accused of participation in the Khartoum bombings. He was therefore relieved to learn that the President had pardoned all of the accused on 6 December 1999.

D. Harassment of humanitarian workers

79. During his stay in Khartoum, the Special Rapporteur learned with concern of several cases of harassment of United Nations staff. It was reported that both Sudanese and international staff were being harassed with regard to entry and exit visas, routine flight clearances and travel permits, and communications equipment in vehicles in the field. It was reported that, in 1998, two local United Nations staff, one from UNICEF and the other from the World Food Programme had been arrested in Juba, kept in incommunicado detention and tortured after they had worked with children who had been abducted by the Lord's Resistance Army (LRA). The two staff members had to be reassigned. The Special Rapporteur learned that the situation has now improved.

VII. Conclusions and recommendations

80. The Special Rapporteur wishes to reiterate the conclusions and recommendations resulting from his mission, as contained in paragraphs 9 to 38 of the note by the secretariat (E/CN.4/2000/36). He also wishes to make a number of additional remarks regarding more recent developments.

A. Respect for human rights and humanitarian law in the conflict

81. Military hostilities have undergone a dramatic escalation over the past few months, during which both parties to the conflict continued to commit ceasefire violations on an unprecedented level and to the extent that the unilateral ceasefire commitments were not renewed after they had expired on 15 July 2000. The Special Rapporteur considers that, while the Government and SPLA exchange accusations, it is the civilian population, in particular women and children, who suffer the consequences of this long war which now enters its eighteenth year. The recent intensification of hostilities has taken a heavy toll on human life and caused much suffering, including even greater forced displacement, seriously jeopardizing humanitarian assistance and gravely overshadowing the prospects for peace.

82. The Government continued its systematic policy of bombing civilians and civilian installations, which resulted, inter alia, in the death of the 14 children in Kaouda. It is possible that the outcry that followed that incident contributed to the President's decision to announce a halt to all aerial bombardment. Nonetheless, shortly thereafter, incidents intensified: in July at least 33 bombing incidents were reported, while in August relief agencies were also targeted, thus leading to the decision by the United Nations to suspend all flights. It was estimated that 45 people had died and some 230 had been injured as a result of the bombings.

83. The Special Rapporteur appreciates that, in its response to the note by the secretariat (E/CN.4/2000/36), the Government of the Sudan, in an effort to comply with international humanitarian standards on the protection of the civilian population, stated that the standing order of the air force pilots was to disregard all bombing instructions if it became clear to the pilot that the targeted areas were civilian installations, or occupied by civilians, or if there were civilians in the area. It further explained that unfortunate and unintended incidents did take place on rare occasions, as had been the case with the Kaouda school on 8 February 2000. The Special Rapporteur, however considers this explanation to be inconsistent with the number and frequency of the aerial attacks against civilian and humanitarian targets. Rather, it appears to be a consistent policy and the Special Rapporteur must therefore conclude that the Government is committing serious violations of international humanitarian law.

84. At the same time, the Special Rapporteur wishes to underline the responsibility of SPLM/A for military actions taken in violation of the ceasefire, such as the capture of Gogrial and the intensification of military activities, mainly in Bahr el-Ghazal.

85. Gravely concerned about the constant disregard by both parties of their own commitments and lack of observance of human rights principles and humanitarian law, the Special Rapporteur is strongly convinced of the need to promote new follow-up mechanisms within the framework of the peacemaking process. In this connection, he fully endorses the recommendations contained in the statement dated 19 July 2000 of the co-chairs of the IGAD Partners Forum, Oslo and Rome, in which they: urged the Government of the Sudan and SPLM/A to renew their ceasefire as at 15 July and reiterated their appeal for a comprehensive and effectively monitored ceasefire; and urged the parties and the mediation structure to work to that end as part of a negotiated solution to the conflict. In their statement, the co-chars expressed the support of the IGAD partners for the IGAD peace process for the Sudan, based upon its Declaration of Principles and in accordance with the principles and objectives embodied in the charter of the Organization of African Unity. They also underlined the need to include all relevant Sudanese parties and neighbours in an active engagement with a view to bringing an end to the conflict, and to coordinate efforts in order to achieve peace in the Sudan with the ultimate goal of an all-embracing process that will lead to a comprehensive settlement.

86. In the same spirit, the Special Rapporteur wishes to acknowledge the importance of the tripartite agreements reached by the two parties and the United Nations for the delivery and protection of humanitarian assistance. In particular, he wishes to highlight the imperative need to apply fully the Agreement on the Implementation of Principles Governing the Protection and Provision of Humanitarian Assistance to War-Affected Civilian Populations, signed by the Government, SPLA and the United Nations Operation Lifeline Sudan, on 15 December 1999.

87. The Special Rapporteur wishes to draw special attention to the plight of the internally displaced persons whose number has further increased as a result of the recent intensification of the conflict, inter alia, in Bahr el Ghazal, Upper Nile, Kassala and Eastern Equatoria. In view of the complexity, dimensions and long-term consequences of this vast human drama, it is essential for all concerned to undertake urgent and concrete action in order to prevent further displacement, to address and alleviate present needs and to envisage long-term policies in terms of lasting solutions. In this regard, it is imperative for the Government and all parties concerned to apply the Guiding Principles on Internal Displacement which, although not binding, have gained international standing and authority.

B. Constitution and transition to democracy

88. The Special Rapporteur regrets that, despite the existence of a more favourable political environment,

cases of arbitrary execution, torture, arbitrary detention, attempts against the freedom of the press and other violations of individual human rights continue to be brought to his attention. He is, therefore, very concerned about the lack of official action to investigate and sanction such abuses.

89. As for legislation on juveniles, the Special Rapporteur invites the Government to consider raising the minimum age of criminal responsibility.

90. Concerning discussions on the most recent legislative developments, the Special Rapporteur, in spite of the Government's clarifications, remains concerned about the new National Security Forces Act, since it is often during the initial period of detention that persons suffer abuse. The Special Rapporteur trusts that the Government will ensure, through appropriate measures, including reform of the law, that all detainees are brought before a judge without delay.

91. The Special Rapporteur is following with particular interest political developments that reveal a new dynamism in the relationship between the Government and the political opposition, especially in northern Sudan. He strongly believes that such developments should not be viewed in isolation but should, in order for them to acquire any real significance, be evaluated in light of the inextricable link between peace, democracy and human rights. Hence, his concern that the foreseen elections may be merely a token arrangement unless they take place as the result of a solid process of system-wide global consultations within a genuine framework of respect for the rights of all parties and political forces involved.

92. In this connection, the Special Rapporteur wishes to reiterate the conclusions and recommendations contained in the above-mentioned note by the Secretariat, in particular the need to guarantee the independence of the judiciary, and to ensure the control of the security organs and the existence of a system of checks and balances. Also, he wishes to reiterate his recommendation that the emergency legislation should be revised in accordance with the stated will of the Government and in full conformity with international human rights standards. On the same grounds, the Special Rapporteur believes that the Government must consider lifting the state of emergency.

Notes

[1] *Official Records of the Economic and Social Council, 2000, Supplement No. 3* (E/2000/3), chap. II, sect. A.

[2] On 29 April, the Government had unilaterally declared a ceasefire for a period of three months, through 15 July. On 8 May, SPLM/SPLM issued its unilateral declaration of a ceasefire, also for a period of three months.

[3] Statement by IGAD Ministers, Brussels, 30 June 2000.

[4] Didingas are concentrated around Chukudum and number some 120,000. The area around Kapoeta, Eastern Equatoria, is inhabited by the Toposa.

[5] The amendments called for the creation of the position of Prime Minister who, although appointed by the President, would be accountable to Parliament. They also called for direct elections of the state governors, currently appointed by the President, and would make their dismissal contingent upon parliamentary approval.

[6] At the time of the Special Rapporteur's visit in February 1999, there were 964.

[7] Owing to space limitations, the cases have not been described in the present report.